

Appl. No. 09/976,182
Amdt. Dated August 4, 2003
Reply to Office Action of May 5, 2003

• • R E M A R K S / A R G U M E N T S • •

The Official Action of May 5, 2003 has been thoroughly studied. Accordingly, the following remarks are believed to be sufficient to place the application into condition for allowance.

Claims 1-4 are pending in this application.

Claims 1-3 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,749,865 to Yamamoto et al.

Claim 4 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Yamamoto et al.

For the reasons set forth below, it is submitted that all of the pending claims are allowable over Yamamoto et al. and therefore, the outstanding rejections of the claims based upon this reference should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner has relied upon Yamamoto et al. as disclosing a disposable pull-on undergarment that comprises a liquid pervious topsheet 10, a liquid impervious backsheet 11, a liquid absorbent core 12, front and rear waist-encircling regions 17 and 18, a crotch region 19, a waist opening 21, and a pair of leg openings 22.

The Examiner notes that the front and rear waist-encircling regions 17 and 18 of Yamamoto et al. comprises a first elasticized zone 28a and a second elasticized zone 28b, and that the tensile

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stress of the first elasticized zone 28a is greater than the second elasticized zone 28b, as described in column 3, line 60 through column 4, line 15.

On page 4 of the Official Action in the "Response to Arguments" section, the Examiner states that:

In regards to applicant's arguments that the elasticized zones disclosed by Tamanoto et al. are adjacent each other in the longitudinal direction of the undergarment, rather than the waist-encircling direction, it is noted that *portions* of each elasticized zone are adjacent to each other in both the longitudinal and waist-encircling directions, as shown in figure 1. While located on separate longitudinally extending planes of the undergarment, the elasticized zones are still adjacent, or nearby, each other in the waist-encircling direction.

The Examiner's position overlooks the fact that applicants' independent claim 1 requires, in part, that:

- 1) The first elasticized zones extend in the waist-encircling direction between each of the joined side edges of the front and rear waist-encircling regions and the side edges of the liquid absorbent core;
- 2) The second elasticized zone traverses a width of the liquid absorbent core and extends in the waist-encircling direction;
- 3) The first and second elasticized zones are adjacent to one another in the waist-encircling direction; and
- 4) The first elastic zones have a tensile stress that is greater than the tensile stress of the second elastic zone.

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The Examiner's interpretation of Yamamoto et al. requires isolating "portions" of each of the stretchable subregions of Yamamoto et al. as the Examiner concedes in the above-cited portion of the Official Action.

Applicants' claims do not recite that "portions" of either the first or second elasticized zones.

As set forth in independent claim 1, applicants' first elasticized zones extend between the side edges of the diaper and the side edges of the liquid absorbent core, and applicants' second elasticized zone extends across the liquid absorbent core.

Applicants' independent claim 1 requires that the first and second elasticized zones, as described above, are adjacent to one another in the waist-encircling direction - not that "portions" of the first and elasticized zones are adjacent to one another.

Yamamoto et al. teaches stretchable subregions that extend between opposite side edges of the diaper as depicted in Figs. 1-3 so that different ones of the stretchable subregions can only be considered longitudinally adjacent one another.

Applicants' independent claim 1 requires that the first elastic zones have a tensile stress that is greater than the tensile stress of the second elastic zone.

Accordingly, collectively considering all the limitations listed above, zones (the first and second zones) having different tensile stress strength are adjacent one another in the waist-encircling direction.

Yamamoto et al. only provides different stretchability properties in the longitudinal direction of the diaper as expressly taught.

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Yamamoto et al. is completely silent about any difference in stretchability along the lateral or waist-encircling direction.

Accordingly, Yamamoto et al. cannot be relied upon, or interpreted in any way, as teaching applicants' claimed limitation of that zones (the first and second zones) having different tensile stress strength are adjacent one another in the waist-encircling direction.

The Examiner cannot isolate "portions" of the stretchable subregions of Yamamoto et al. while ignoring what Yamamoto et al. teaches overall.

Such an approach negates proper consideration of what Yamamoto et al. actually teaches to one skilled in the art.

As held by the court of appeals in *In re Wesslau*:

It is impermissible within the framework of Section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. *In re Wesslau*, 147 USPQ 391, at 393 (CCPA 1965) (Underlying added).

It is important for the Examiner to determine what Yamamoto et al. "fairly suggests" or teaches to one of ordinary skill in the art overall, without trying to interpret Yamamoto et al. in view of applicants' own disclosure.

Yamamoto et al. clearly teaches stretchable subregions 23a, 28a, 28b and 28c having different longitudinal stresses that are adjacent one another in the longitudinal direction of the diaper for a particular function and purpose.

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Applicants' invention provides first and second elasticized zones having different tensile stress strengths that are adjacent one another in the transverse or waist-encircling direction of the diaper.

The teachings of Yamamoto et al. are completely opposite to applicants' claimed invention. That is what one skilled in the art would quickly recognize.

Any application or reliance upon a prior art teaching under either 35 U.S.C. §102 or §103 has to be based upon what the prior art teaches to those skilled in the art and not how the teachings of the prior art can be interpreted in a convoluted manner in an attempt to read on an applicant's claims.

Yamamoto et al. does not anticipate applicants' claimed invention. Rather, as noted above, the teachings of Yamamoto et al. are completely opposite to applicants' disclosed and claimed invention.

It is noted that the Examiner has stated that "...the elasticized zones are still adjacent, or nearby, each other..."

Although the Examiner seems to equate "adjacent" with "nearby," applicants note that a standard dictionary definition of "adjacent" is:

not distant : NEARBY <the city and *adjacent* suburbs> b : having a common endpoint or border <*adjacent* lots> <*adjacent* sides of a triangle> c : immediately preceding or following. (See www.webster.com)

A standard dictionary definition of "nearby" is: "close at hand" (See www.webster.com).

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It is submitted that the proper scope of the term "adjacent" as used by applicants and supported by their disclosure is that the first and second elasticized zones "immediately proceed or follow" one another. This interpretation is commensurate with the definition of "adjacent" above.

The term "nearby" which is defined as "close at hand" is not technically accurate as compared to "adjacent" as defined above when interpreting either Yamamoto et al. or applicants' disclosure and claims.

Although the Examiner is allowed to broadly interpret the language of an applicant's claims, the Examiner has to give deference to interpretations that one skilled in the art would apply. That is, the Examiner has to apply the technically correct interpretation whenever possibly. To do otherwise would eliminate proper consideration of what the claims mean to one skilled in the art upon reading an applicant's disclosure.

Based upon the above distinctions between Yamamoto et al. and the present invention, and the overall teachings of Yamamoto et al., properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon Yamamoto et al. as required under 35 U.S.C. §102 as anticipating applicants' claimed invention.

Moreover, it is submitted that the Examiner cannot properly rely upon Yamamoto et al. as required under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

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It is, therefore, submitted that any reliance upon Yamamoto et al. would be improper inasmuch as Yamamoto et al. does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of Yamamoto et al. and the outstanding rejections of the claims should hence be withdrawn.

Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

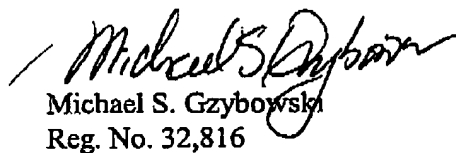
If upon consideration of the above, the Examiner should feel that there remains outstanding issues in the present application that could be resolved, the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of

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time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,


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